lowed by the Federal courts in their interpretation of the constitutional requirement of just compensation in such cases. *Bauman* v. *Ross*, 167 U. S. 548.

EVIDENCE—RAPE—COMPLAINT.—In a prosecution for assault with intent to commit rape on a child under the age of consent, the mother of the prosecutrix was allowed to testify to the details of the complaint and further that the prosecutrix named the defendant as her assailant. *Held*, not prejudicial error. *State* v. *Whitman* (Ore.), 143 Pac. 1121.

If the complaint is so closely connected with the act as to be part of the *res gestæ*, where the fact speaks through the person acting, the details of the complaint are admissible to prove the crime. *State* v. *Ellison* (N. M.), 144 Pac. 10. Otherwise third parties are allowed to testify as to the complaint for the purpose of corroborating the prosecuting witness and to rebut any inference of consent, but not to prove the defendant's guilt. *Thompson* v. *State*, 38 Ind. 39. In England the details of the complaint are received as well as the fact, in this case. *Reg.* v. *Lillyman*, L. R. 2 Q. B. (1896) 167. But in this country the rule is different, and if the complaint is not a part of the *res gestæ*, or if no attempt is made to impeach the prosecuting witness, the weight of authority confines such testimony to the bare fact that complaint was made. *Thompson* v. *State*, *supra*; *Proper* v. *State*, 85 Wis. 615, 55 N. W. 1035; *Posey* v. *State*, 143 Ala. 54, 38 South. 1019. The admission of the details of the complaint in such case is prejudicial error. *State* v. *Niles*, 47 Vt. 82; *Thompson* v. *State*, *supra*. Likewise a third person will not be allowed to testify that the prosecutrix named the defendant as her assailant. *State* v. *Niles*, *supra*; *Thompson* v. *State*, *supra*; *State* v. *Griffin*, 43 Wash. 591, 86 Pac. 951. It is held in one jurisdiction though, that if the prosecutrix be of tender years the details of the complaint will be admitted. *People* v. *Gage*, 62 Mich. 271, 28 N. W. 835. But not if the prosecutrix be an adult. *People* v. *Marrs*, 125 Mich. 376, 84 N. W. 284. In a few jurisdictions the details are admissible in any case. *State* v. *Kinney*, 44 Conn. 153, 26 Am. Rep. 436; *Hill* v. *State*, 73 Tenn. 725; *State* v. *Andrews*, 130 Iowa 609, 105 N. W. 215.

The reason for excluding the details while admitting the fact of the complaint has never been clear. If the sole ground for admitting the testimony is to rebut any inference of consent of the prosecutrix, it would seem that the fact alone should be admitted, since this would be sufficient to rebut the inference. Where the prosecutrix is under the age of consent, as in the principal case, this reason fails, and it would seem that this hearsay evidence should not be admitted. See *State* v. *Birchard*, 35 Ore. 484, 59 Pac. 468. But where, as in most such cases, such testimony is admitted on the broader ground of corroborating the testimony of the prosecutrix, the details would seem as pertinent as the fact. Nor would the admission of the details seem to be any more prejudicial to the defendant, provided the witness is not allowed to testify that the defendant was named as the assailant.

Testimony that the prosecutrix so named the defendant would affirmatively connect him with the crime, going beyond corroboration, and objectionable as hearsay evidence.

HABEAS CORPUS—SUSPENSION OF WRIT.—During a state of insurrection, the governor declared martial law to exist in a certain district. The plaintiff was arrested by the military authorities, held without bail and denied the privilege of the writ of habeas corpus. *Held*, the governor of a State, without constitutional authority has no power to suspend the writ of hapeas corpus, since this is a legislative, and not executive, function. *Ex parte McDonald* (Mont.), 143 Pac. 947.

It is well settled that the President has no power to suspend the writ of habeas corpus in the Federal courts, that power being vested in Congress alone. *In re Kemp*, 16 Wis. 359; *Ex parte Merryman*, 17 Fed. Cas. 145. See *Ex parte Milligan*, 4 Wall. 2. But a good many authorities, under the provisions of certain State constitutions, have upheld the power of the governor to suspend the privilege of the writ of habeas corpus, in declaring a particular locality to be in a state of insurrection. *In re Boyle*, 6 Idaho 609, 45 L. R. A. 832; *In re Moyer*, 35 Col. 154, 91 Pac: 738; *State* v. *Brown* (W. Va.), 77 S. E. 243, 45 L. R. A. (N. S.) 996.

The better view would seem to be that, unless the power to suspend the writ of habeas corpus is expressly given to the governor in the State constitution, he may not exercise such power. The presumption should always be against the power of the governor to suspend the writ, since this is generally considered to be a legislative, rather than an executive function. See *Ex parte Moore*, 64 N. C. 802.

PARTNERSHIP—PARTNERSHIP BY ESTOPPEL—TORTS.—The defendant retired from a partnership of which he had been a member, but permitted the firm to continue to hold him out as a partner. The plaintiff was injured in the partnership's place of business by the negligence of a servant of the partnership acting in the course of his employment. *Held*, the defendant is liable for the tort. *Jewison* v. *Dicudonne* (Minn.), 149 N. W. 20.

It is well settled that one who knowingly permits himself to be held out as a partner, though he is not such in fact, is nevertheless liable as a partner to one contracting with the firm or extending credit to it in reliance upon such holding out. *Richards* v. *Hunt*, 65 Ga. 342. But this rule is based on the doctrine of estoppel, and accordingly it is essential that the person contracting with the firm does so in reliance upon the holding out, for the only ground of charging him as a partner is that by his conduct in holding himself out as a partner he has induced persons dealing with the partnership to believe him to be a partner, and, by reason of such belief to give credit to the partnership; he has not in fact contracted but, he is not allowed to deny that he has contracted. *Thompson* v. *First National Bank*, 111 U. S. 529; *In re Stoddard Lumber Co.*, 169 Fed. 190; 1 LINDLEY, PARTNERSHIP 47. Thus it is held that a partner who retires from the firm is not liable for obli-